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JUSNINAWATI ABDUL GHANI v. PP

FEDERAL COURT, PUTRAJAYA
ALIZATUL KHAIR OSMAN FCJ
ROHANA YUSUF FCJ
MOHD ZAWAWI SALLEH FCJ
B
TENGKU MAIMUN TUAN MAT FCJ
IDRUS HARUN FCJ
[CRIMINAL APPEAL NO: 05-275-11-2017(W)]
18 OCTOBER 2019

C

CRIMINAL LAW: *Penal Code – Section 130JA – Offence of travelling to, through or from Malaysia for commission of terrorist acts in foreign country – Accused person, a police corporal, failed to disclose information on possible terrorist act to superior officers – Whether obliged and legally bound to report information to superior officers – Whether omission to disclose information illegal – Whether*
D *possible terrorist act fell under offences prescribed under s. 13(1)(a) of Criminal Procedure Code requiring disclosure*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Accused person a police corporal – Accused convicted for omitting to disclose information on possible terrorist act – Accused person sentenced to seven years'*
E *imprisonment – Whether accused person obliged and legally bound to report information to superior officers – Whether omission to disclose information illegal – Whether possible terrorist act fell under offences prescribed under s. 13(1)(a) of Criminal Procedure Code requiring disclosure – Whether s. 13(1)(a) of Criminal Procedure Code or s. 13(1)(a) of Criminal Procedure Code (Amendment) Act 2016*
F *applied to appellant's case – Penal Code, s. 130JA*

The appellant, a police corporal, was informed by one Nor Azimah ('SP1'), her Facebook acquaintance, of the latter's impending marriage to one Abdul Ghani ('Abu Kedah') and their plans to travel to Syria to join the Islamic State ('IS') and to commit terrorist acts. Despite possessing this piece of
G information since August 2015, the appellant did not share it with her superior officers. The appellant was charged at the High Court, for omitting to disclose information pertaining to terrorist act, an offence under s. 130JA of the Penal Code ('PC'). During the prosecution's case, SP1 testified that (i) in September 2015, she arranged for the appellant to meet with Abu
H Kedah; (ii) she received a WhatsApp message from Abu Kedah that the appellant aspired to go to Syria but her intention was aborted due to financial problems; and (iii) her own plans to travel to Syria did not materialise as her marriage with Abu Kedah only lasted for five days and she was involved in a road accident. Satisfied that the prosecution had successfully established a
I *prima facie* case, the appellant was called to enter her defence. The appellant's defence was one of denial and she explained that she did not report the information as she considered the same as 'empty talk'. The High Court

rejected the appellant's defence, convicted her for the offence and sentenced her to seven years' imprisonment. The appellant's conviction and sentence were upheld by the Court of Appeal. Hence, the present appeal. The issue that arose for adjudication was whether the appellant was legally-bound to furnish the information concerned. The appellant argued that it was not illegal for her to omit to report the information received, to her superior officers, as s. 13(1) of the Criminal Procedure Code ('CPC') only requires a person to furnish information in respect of offences specifically mentioned.

Held (allowing appeal; setting aside conviction and sentence; acquitting and discharging appellant)
Per Mohd Zawawi Salleh FCJ delivering the judgment of the court:

(1) Section 13(1)(a) of the CPC has been amended by the Criminal Procedure Code (Amendment) Act 2016 ('CPCA') which came into force on 23 December 2016. Section 13(1)(a) of the CPCA casts a duty on the public to give information about the commission of an offence punishable under the PC or any other written laws. The appellant was alleged to have committed the offence prior to the effective date of the new provision. Section 13(1)(a) of the CPCA, which was in the form of substantive law, does not apply retrospectively and was inapplicable to the case against the appellant. (paras 21 & 22)

(2) Section 13(1)(a) of the CPC imposed a duty on every person, including the appellant, who is aware of the commission of the offence enumerated in that section, to give information to the nearest police station, police officer or *penghulu*. Once there is an omission, such persons become criminally liable. Certain offences are mentioned in s. 13(1)(a) of the CPC. However, it did not refer to the offence of travelling to a foreign country to commit terrorist acts under s. 130JA of the PC, with which the present case was concerned with. Therefore, the appellant was not obliged to report the information concerned. (para 26)

(3) The prosecution of the appellant, for the non-reporting of the possible commission of the s. 130JA offence by SP1 and Abu Kedah, was unsustainable in law. The prosecution adduced no evidence concerning the appellant's scope of work. There was also no evidence to show that the appellant was directed to gather intelligence on terrorist-related activities and to transmit the same to her superior officers. The appellant was charged and convicted for an offence not known to law. (paras 28 & 31)

***Bahasa Malaysia** Headnotes*

Perayu, seorang polis berpangkat koperal, dimaklumkan oleh seorang bernama Nor Azimah ('SP1'), kenalannya di Facebook, tentang perkahwinan SP1 dengan seorang bernama Abdul Ghani ('Abu Kedah') yang bakal berlangsung dan rancangan mereka untuk melakukan perjalanan ke Syria demi menyertai Islamic State ('IS') dan melakukan tindakan-tindakan

A pengganas. Walaupun memiliki maklumat ini sejak Ogos 2015, perayu tidak memaklumkannya pada pegawai-pegawai atasannya. Perayu dituduh di Mahkamah Tinggi, kerana meninggalkan daripada memberi apa-apa maklumat tentang perbuatan keganasan, satu kesalahan bawah s. 130JA Kanun Keseksaan ('KK'). Semasa kes pendakwaan, SP1 memberi keterangan
B bahawa (i) pada September 2015, dia mengaturkan satu pertemuan antara perayu dan Abu Kedah; (ii) dia menerima satu pesanan WhatsApp daripada Abu Kedah bahawa perayu berhasrat pergi ke Syria tetapi niatnya dibatalkan akibat masalah kewangan; dan (iii) rancangan SP1 sendiri untuk perjalanan ke Syria tidak tercapai kerana perkahwinannya dengan Abu Kedah hanya
C bertahan selama lima hari dan dia terlibat dalam kemalangan jalan raya. Berpuas hati pihak pendakwaan berjaya membuktikan satu kes *prima facie*, perayu dipanggil membela diri. Pembelaan perayu berbentuk satu penafian dan dia menjelaskan bahawa dia tidak melaporkan maklumat tersebut kerana menganggapnya satu 'cakap kosong'. Mahkamah Tinggi menolak pembelaan
D perayu, mensabitkannya atas kesalahan dan menjatuhkan hukuman tujuh tahun penjara atasnya. Sabitan dan hukuman terhadap perayu disahkan oleh Mahkamah Rayuan. Maka timbul rayuan ini. Isu yang berbangkit untuk pemutusan adalah sama ada perayu terikat, bawah undang-undang, untuk memberikan maklumat berkenaan. Perayu menghujahkan bahawa bukanlah satu kesalahan undang-undang buatnya kerana ketinggalan melaporkan
E maklumat yang diterima, kepada pegawai-pegawai atasannya, kerana s. 13(1) Kanun Tatacara Jenayah ('KTJ') hanya mengkehendaki seseorang memberi maklumat tentang kesalahan-kesalahan yang dinyatakan dengan khusus.

Diputuskan (membenarkan rayuan; mengetepikan sabitan dan hukuman; melepaskan dan membebaskan perayu)

F **Oleh Mohd Zawawi Salleh HMP menyampaikan penghakiman mahkamah:**

(1) Seksyen 13(1)(a) KTJ telah dipinda oleh Akta Kanun Tatacara Jenayah (Pindaan) 2016 ('KTJP') yang berkuat kuasa pada 23 Disember 2016. Seksyen 13(1)(a) KTJP mewajibkan orang awam memberi maklumat
G tentang perbuatan kesalahan yang boleh dihukum bawah KK atau mana-mana undang-undang bertulis. Perayu dikatakan melakukan kesalahan tersebut sebelum tarikh kuat kuasa peruntukan baharu ini. Seksyen 13(1)(a) KTJP, yang berbentuk undang-undang substantif, tidak terpakai secara retrokspektif dan tidak terpakai pada kes terhadap perayu.

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(2) Seksyen 13(1)(a) KTJ mengenakan kewajipan terhadap setiap individu, termasuk perayu, yang mengetahui tentang perbuatan kesalahan yang termaktub dalam seksyen tersebut, agar memberi maklumat kepada balai polis terdekat, pegawai polis atau penghulu. Jika terdapat
I ketinggalan, orang-orang ini bertanggungan secara jenayah. Beberapa kesalahan dinyatakan bawah s. 13(1)(a) KTJ. Namun begitu, ini tidak

merujuk kesalahan perjalanan ke negara asing demi melakukan perbuatan-perbuatan keganasan bawah s. 130JA KK, seperti dalam kes ini. Oleh itu, perayu tidak berkewajipan melaporkan maklumat berkenaan.

(3) Pendakwaan terhadap perayu, kerana tidak melaporkan kemungkinan perbuatan kesalahan bawah s. 130JA oleh SP1 dan Abu Kedah, tidak boleh kekal bawah undang-undang. Pihak pendakwaan tidak mengemukakan keterangan tentang skop kerja perayu. Di samping itu, tiada keterangan yang menunjukkan perayu diarahkan membuat risikan tentang aktiviti-aktiviti berkaitan pengganas dan menyampaikannya kepada pegawai-pegawai atasannya. Perayu dituduh dan disabitkan atas kesalahan yang tidak wujud bawah undang-undang.

Case(s) referred to:
Akhabaruddin Owaisi v. The Government of Andhra Pradesh [2014] CrlJ 2199 ***(refd)***
Chiew Poh Kiong v. PP [2001] 7 CLJ 249 HC ***(refd)***
Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***
Dr Satyasaheel Nandlal Naik v. State of Maharashtra [1996] Cr LJ 1463 ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 13(1)(a), 103, 104
Evidence Act 1950, s. 114(g)
Penal Code, ss. 43, 130JA, 130M
Police Act 1967, ss. 3(3), 20(3)

The Code of Criminal Procedure 1973 [India], s. 39
The Indian Penal Code 1860 [India], ss. 279, 337, 338, 304A

Other source(s) referred to:
Craies on Statute Law, 7th edn, p 529
Dr Hari Singh Gour's, *Penal Law of India*, 9th edn, 1972, p 231
Maxwell on Interpretation of Statutes, 12th edn, pp 239-240

For the appellant - Farida Mohammad; M/s Farida & Company
For the respondent - Faizah Mohd Salleh; DPP

[Editor's note: For the Court of Appeal judgment, please see Jusninawati Abdul Ghani lwn. PP [2018] 1 LNS 2181 (overruled); For the High Court judgment, please see [2016] 1 LNS 1657 (overruled).]

Reported by Najib Tamby

JUDGMENT

Mohd Zawawi Salleh FCJ:

Introduction

[1] The appellant was charged and tried at the Kuala Lumpur High Court for an offence of omitting to disclose information pertaining to a terrorist act. The charge reads as follows:

A Bahawa kamu, di antara bulan Ogos 2015 sehingga 22 Mac 2016, di Balai Polis Petaling Jaya, di Ibu Pejabat Daerah Petaling Jaya, dalam Daerah Petaling, dalam Negeri Selangor, yang mempunyai sebab untuk mempercayai bahawa suatu perbuatan keganasan iaitu kesalahan yang boleh dihukum di bawah seksyen 130JA Kanun Keseksaan akan dilakukan, meninggalkan dengan sengaja daripada memberi apa-apa
B maklumat berkenaan dengan kesalahan itu, yang kamu terikat di sisi undang-undang untuk memberi, dan oleh itu kamu telah melakukan satu kesalahan yang boleh dihukum di bawah seksyen 130M Kanun yang sama.

[2] After full trial, the High Court found the appellant guilty and
C sentenced her to seven years' imprisonment, the maximum term allowed by law. The sentence was ordered to run from the date of her arrest ie, on 22 March 2016. The conviction and sentence were upheld by the Court of Appeal on 8 November 2017. Aggrieved by the impugned conviction and sentence, the appellant has now appealed to this court.

D **[3]** We have heard learned counsel for the appellant and learned Deputy Public Prosecutor ("DPP") at some length. We have also perused the written submissions carefully and examined the records available before us in its entirety. For the reasons that follow, we found that there was merit in this appeal and accordingly we allowed the appellant's appeal and quashed the
E conviction and sentence.

Factual Background And The Antecedent Proceedings

[4] Briefly stated, the case against the appellant was that she possessed information about the plans of two individuals ie, Nor Azimah binti Adnan
F ("SP1") and one Abdul Ghani bin Yaacob to travel to Syria and to commit terrorist acts by joining the military movement of the Islamic State ("IS"). The appellant was alleged to have been in possession of this information as early as August 2015. However, she withheld the information from her superiors. The prosecution adduced evidence that Abdul Ghani bin Yaacob
G had travelled to Syria and was killed in a battle at the Al Khair province.

[5] The appellant was a policewoman with the rank of corporal, stationed at the Petaling Jaya District Police Headquarters. She was allegedly drawn to the conflict in Syria via Facebook in 2013. She also had networking ties with several other IS militants such as Abu Syamil and Fudhail Omar
H through social media platforms. She was reprimanded and advised by an officer from the Bukit Aman Special Branch not to be involved with the terrorist group.

[6] At the trial, it was established that sometime in August 2015, the appellant was informed by her Facebook acquaintance, Nor Azimah binti
I Adnan ("SP1"), also nicknamed Umi Diyana, of her impending marriage to Abdul Ghani bin Yaacob and their travel plans to Syria to join the IS which was a terrorist-related offence punishable under s. 130JA of the Penal Code. Abdul Ghani was known as "Abu Kedah" among the members of IS.

[7] Sometime in September 2015, SP1 arranged for the appellant to meet with "Abu Kedah" and during the said meeting, "Abu Kedah" had informed the appellant of his intention to travel to Syria with SP1. SP1 testified that she had received a text message from "Abu Kedah" through "WhatsApp" application informing SP1 that the appellant had also aspired to go to Syria but her intention was aborted due to financial problems. SP1's plan to travel to Syria did not materialise because her marriage with "Abu Kedah" only lasted for five days and she was involved in a road accident in November 2015.

[8] The appellant's cautioned statements were tendered and marked as exhs. P6(a) to P6(e). It was stated in those statements that the appellant had utilised social media platforms such as Facebook and Telegram to communicate with other IS members; and she was being informed by "Abu Kedah" of his plan to take SP1 to Syria. However, the appellant did not report the information to her superior officers since she regarded Abu Kedah's plans as "empty talk".

Findings Of The High Court

[9] The offence with which the appellant was charged is provided under s. 130M of the Penal Code which reads as follows:

> 130M. Intentional omission to give information relating to terrorist acts
>
> Whoever knowing or having reason to believe that any offence punishable under sections 130C to 130L has been or will be committed intentionally omits to give any information respecting that offence, which he is legally bound to give, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

[10] At the close of the prosecution's case, the learned Judicial Commissioner ("JC") was satisfied that a *prima facie* case had been established against the appellant. His Lordship found the following essential ingredients of the offence to have been proven by the prosecution:

(i) That the appellant had reasons to believe that a terrorist act would be committed;

(ii) That she had omitted to give that information in respect of the s. 130JA offence; and

(iii) That she was legally bound to give information in respect of the s. 130JA offence.

[11] The learned JC held that the prosecution had adduced credible evidence to prove that the appellant had reasons to believe that a terrorist act would be committed. In point of fact, "Abu Kedah" had gone to Syria in December 2015 after divorcing his wife and was killed in battle in April 2016. The learned JC had accepted the evidence of the investigating officer

("SP4") that the appellant had failed to transmit the information given to her by SP1. As for the third element, the learned JC had referred to s. 13(1)(a) of the Criminal Procedure Code ("CPC"), s. 3(3) and s. 20(3) of the Police Act 1967 (Revised 1988) and held that the appellant, as a trained police personnel, was legally bound to collect information on terrorist group, process it and hand it over to the authorities.

[12] When called upon to enter her defence, the appellant elected to give an unsworn statement from the dock and did not call any witness. In a nutshell, the appellant had denied the charge against her and explained that she did not report the information received because she regarded the information as "empty talk" since it was not easy to enter Syria and it would incur substantial costs.

[13] Having considered the appellant's unsworn statement, the learned JC found that her explanation did not raise any reasonable doubt in the prosecution's case. The appellant's explanation was rejected by the learned JC and His Lordship was of the view that the appellant, who was a trained police personnel, had no excuse at all not to report the information received. The learned JC was of the opinion that the issue about the difficulty of travelling to Syria did not arise as the appellant was in communication with several "Daesh" militant members who were already there.

Findings Of The Court of Appeal

[14] Being aggrieved with the decision, the appellant filed an appeal to the Court of Appeal. Eleven grounds of appeal were raised by the appellant in assailing the learned JC's decision but the focus of counsel's argument was on the following issues:

(i) That in the circumstances of the case, the appellant could not have had reasons to believe or the knowledge that a terrorist act would be committed;

(ii) That the appellant had no legal obligation to give information under s. 13(1)(a) of the CPC, relating to the commission of the offence punishable under s. 130JA of the PC because s. 13(1)(a) of the CPC makes no reference to s. 130JA of the PC; and

(iii) That presumption of adverse inference under s. 114(g) of the Evidence Act 1950 should have been invoked against the prosecution for failing to adduce forensic reports and/or digital evidence that points to a possibility of Facebook and/Telegram networking ties that the appellant has with the "Daesh" militant members.

[15] The Court of Appeal had unanimously dismissed the appellant's appeal and affirmed the conviction and sentence. In arriving at its findings, the Court of Appeal held that the learned JC had duly complied with the procedural requirement of subjecting the prosecution's evidence to a

maximum evaluation based largely on the credibility and reliability of witnesses. In the circumstances of the case, the Court of Appeal found that the appellant must have had "reasons to believe" that a terrorist act would be committed. The Court of Appeal went further to hold that the non-production of the forensic reports and / or digital evidence was not by itself fatal for the prosecution case nor had it created any suspicion about the truthfulness of the version given by the prosecution witnesses.

[16] In respect of issue (ii), the Court of Appeal found that the learned JC had erred in law in his reliance on s. 13(1)(a) of the CPC because the offence of travelling to a foreign country for the commission of terrorist acts under s. 130JA of the PC was not one of those listed in sub-s. 1(a). However, the Court of Appeal held that the said error was not fatal because there are other statutes ie, s. 3(3) and s. 20(3) of the Police Act 1967, and ss. 103 and 104 of the CPC which imposed a legal duty upon the appellant to report the information received.

The Appeal

[17] The sole issue for determination before this court was whether the appellant was legally bound to furnish the information concerned?

[18] To bring home the charge against the appellant, she must be shown to be legally bound to furnish information. "Legally bound" is defined in s. 43 of the PC as follows:

> 43. 'Illegal', 'unlawful' and 'legally bound to do'
>
> The word 'illegal' or 'unlawful' is applicable to everything which is an offence, or which is prohibited by law, or which furnishes ground for civil action.
>
> And in respect of the word 'illegal', a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

[19] We referred to Dr Hari Singh Gour's comment in his book *Penal Law of India*, 9th edn, (1972) at p. 231:

> The test to see whether a person is "legally bound" to give information to do anything else is not whether he is enjoined by the law to give such information or to do such thing but to see whether the omission to do so would be "illegal" within the meaning of s. 43, i.e., is an offence under the Code, or is prohibited by law or is such as to give rise to a cause of action for a civil action. Thus the test is a negative one.

[20] The above proposition was cited with approval by Ian Chin J in *Chiew Poh Kiong v. PP* [2001] 7 CLJ 249. Applying the above test, it was contended by learned counsel for the appellant that it was not illegal for the appellant to omit to report the information received to her superior because s. 13(1)(a) of the CPC only requires a person to furnish information in respect of offences specifically mentioned therein. Section 13(1)(a) reads as follows:

A 13. Public to give information of certain matters.

(1) Every person aware:

(a) of the commission of or the intention of any other person to commit any offence punishable under the following sections of the Penal Code:

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121, 121A, 121B, 121C, 122, 123, 124, 125, 126, 130, 143, 144, 145, 147, 148, 302, 304, 307, 308, 363, 364, 365, 366, 367, 368, 369, 372, 372A, 372B, 376, 376B, 377C, 377CA, 377E, 382, 384, 385, 386, 387, 388, 389, 392, 393, 394, 395, 396, 397, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460; or

C

(b) ...

shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, immediately give information to the officer in charge of the nearest police station or to a police officer or the nearest penghulu of the commission or

D intention or of the sudden, unnatural or violent death or of the finding of the dead body, as the case may be.

[21] At this juncture, it is pertinent to note that the provision has been amended by the Criminal Procedure Code (Amendment) Act 2016 (Act 1521) which came into force on 23 December 2016. The new s. 13(1)(a)

E reads as follows:

13. Public to give information of certain matters.

(1) Every person aware:

(a) of the commission of or the intention of any other person to commit

F any offence punishable under the Penal Code or any other written law;

(b) ...

shall in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, immediately give information to the

G officer in charge of the nearest police station or to a police officer or the nearest penghulu of the commission or intention or of the sudden, unnatural or violent death or of the finding of the dead body, as the case may be.

[22] The appellant was alleged to have committed the offence prior to the

H effective date of the new provision ie, on 23 December 2016. It is trite that the new s. 13(1)(a), which is in the form of substantive law does not apply retrospectively (see *Dalip Bhagwan Singh v. PP* [1997] 4 CLJ 645). In our view, the new provision of s. 13(1)(a) of the CPC which casts a duty on the public to give information about the commission of an offence punishable

I under the Penal Code or any other written law, is inapplicable to the case against the appellant.

[23] The old s. 13(1)(a) of the CPC corresponds with s. 39 of the Indian Criminal Procedure Code 1973 ("CrPC") which reads as follows:

39. Public to give information of certain offences

(1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code, (45 of 1860), namely:

(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);

(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);

(v) sections 302, 303 and 304 (that is to say, offences affecting life);

(va) section 364A (that is to say, offence relating to kidnapping for ransom, etc.);

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) sections 392 to 399, both inclusive, and section 402 (that is to say, offences of robbery and dacoity);

(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);

(ix) sections 431 to 439, both inclusive (that is to say, offences of mischief against property);

(x) sections 449 and 450 (that is to say, office of house - trespass);

(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house - trespass); and

(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes)

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police officer of such commission or intention.

[24] The Mumbai High Court in the case of *Dr Satyasaheel Nandlal Naik v. State of Maharashtra* [1996] Cr LJ 1463, had occasion to consider the issue whether a doctor was obliged to inform the police when he had treated a patient who died in a motor vehicle accident due to rash and negligent driving, which offences were punishable under ss. 279, 337, 338 or 304A of the Indian Penal Code ("IPC"). The court held that there was no statutory obligation on a citizen to inform the police about the commissions of other offences that were not mentioned in s. 39 of the CrPC. Therefore, the prosecution against the doctor for failure to inform about the accident to the police could not stand.

[25] In the same vein, the Andhra Pradesh High Court in the matter of *Akhabaruddin Owaisi v. The Government of Andhra Pradesh* [2014] CrlJ 2199 held as follows:

> 26. Every citizen who has knowledge of the commission of cognisable offence has the duty to lay the information before the police under Section 39 Cr.P.C, (*State of Gujarat v. Anirudhsing* [1997] 6 SCC 514), which obligates every person, who is aware of the commission of the offences mentioned in that Section, to give information to the nearest Magistrate or Police Officer. There is no statutory obligation on a citizen to inform the police about offences other than those mentioned in Section 39 Cr.P.C, (*Dr. Satyasaheel Nandlal Naik v. State of Maharashtra* [1996] Cri.l.J. 1463), as it merely casts a duty and an obligation to report offences mentioned therein, omission to discharge which is made penal. The said Section has been designed with the purpose of securing information relating to the commission of an offence with all expedition so that investigation should ensue. Once the information, relating to the commission of the offence has actually reached the Police Station the requirements of Section 39 Cr.P.C. are fully satisfied. Every eye-witness or every person who is in the know of the circumstances relating to an offence is not expected, thereafter, to go to the Police Station to give a report of what he saw. (*State of Maharashtra v. Dashrath Lahanu Kadu* [1972] (45) Bombay Law Reporter 450).

[26] So too here. The old s. 13(1)(a) of the CPC imposes a duty on every person, including the appellant, who is aware of the commission of the offence enumerated in that section, to give information to the nearest police station or police officer or penghulu. Once there is an omission, such persons become criminally liable. Certain offences are mentioned in s. 13(1)(a) of the CPC, but it does not refer to the offence of travelling to a foreign country to commit terrorist acts under s. 130JA of the PC, with which we are concerned here. Thus, the appellant was not obliged to report the information concerned.

[27] It is a well-established principle of statutory interpretation that Parliament is not presumed to have intended to limit or interfere with the personal liberty of a citizen, unless it indicates this intention in clear, unmistakable and unambiguous terms. It is trite that criminal and penal

statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Therefore, no act or omission is to be deemed criminal unless it is clearly made so by words of the statute concerned (see *Maxwell on Interpretation of Statutes*, 12th edn, at pp. 239 - 240 and *Craies on Statute Law*, 7th edn, at p. 529).

[28] In our considered view, unless the contrary intention appears, Parliament could not have intended under the old s. 13(1)(a) of the CPC to impose a legal obligation on persons to furnish information in respect of the possible commission of s. 130JA offence. On that score, we were in agreement with the Court of Appeal that the learned JC had erred in his reliance on the old s. 13(1)(a) of the CPC. In light of above discussion, it was our considered view that the prosecution of the appellant for non-reporting the possible commission of s. 130JA offence by SP1 and "Abu Kedah", under s. 130M of the Penal Code was unsustainable in law.

[29] Learned DPP vehemently argued that there are other statutes that impose legal obligation on the appellant to furnish information eg, s. 3(3) and s. 20(3) of the Police Act 1967 which read:

3. Constitution of the Police Force.

(1) ...

(2) ...

(3) The Force shall subject to this Act be employed in and throughout Malaysia (including the territorial waters thereof) for the maintenance of law and order, the preservation of the peace and security of Malaysia, the prevention and detection of crime, the apprehension and prosecution of offenders and the collection of security intelligence.

20. General duties of police officer.

(1) Every police officer shall perform such duties and exercise such powers as are by law imposed or conferred upon a police officer, and shall obey all lawful directions in respect of the execution of his offence which he may from time to time receive from his superior officers in the Force.

(2) ...

(3) Without prejudice to the generality of the foregoing provisions or any other law, it shall be the duty of a police officer to carry out the purposes mentioned in subsection 3(3); and he may take such lawful measures and do such lawful acts as may be necessary in connection therewith, including:

A (a) apprehending all persons whom he is by law authorised to apprehend;

(b) processing security intelligence;

(c) - (m)

B **[30]** In support of her submission, learned DPP cited the following passage of the Court of Appeal's grounds of judgment:

> [14] Pada pandangan kami perayu telah dengan sengaja tidak memaklumkan pegawai atasannya mengenai maklumat yang diadukan dalam pertuduhan berkenaan. Harus dicatatkan juga bahawa perayu
C pernah ditegur dan dinasihatkan oleh pegawai atasan polis dahulu supaya tidak melibatkan diri dengan hal-hal yang berkaitan IS. Perayu semesti dan seharusnya menyedari seriusnya perkara yang ditegur itu dan betapa pentingnya maklumat yang diterima dan diketahuinya itu dalam konteks tanggungjawab tersebut. Sebagai anggota polis dan selaras dengan tanggungjawab yang dikenakan kepada semua anggota polis di bawah
D s. 3(3), s. 20(1) dan (3), Akta Polis 1967 dan s. 103/104 KPJ, perayu dengan jelas terikat dengan perundangan statutori itu untuk memaklumkan maklumat berkenaan yang ternyata terjatuh dalam jaringan s. 130JA kepada pihak atasannya. Kami dengan itu menolak hujahan peguam tentang isu ini.

E **[31]** With the greatest respect, the Court of Appeal was wrong in affirming the decision of the learned JC. It must be borne in mind that the definition of "legally bound", as we had alluded to earlier in this judgment, is a negative test and the word "illegal" is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action. In
F this instant appeal case, the prosecution adduced no evidence concerning the appellant's scope of work. There was also no evidence on record to show that the appellant was directed to gather intelligence on terrorist-related activities and to transmit the same to her superiors. In our considered view, the appellant was charged and convicted of an offence not known to law.

G **Conclusion**

[32] For the foregoing reasons, we were of the opinion that the Court of Appeal had committed a serious error of law warranting appellate intervention. We were firmly of the view that the conviction against the appellant was wrong and unsustainable in law and must be quashed. We,
H therefore, allowed the appellant's appeal and set aside the conviction and sentence imposed. Consequently, the appellant was acquitted and discharged forthwith. So ordered.

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